

The Magistrate was wrong in thus rejecting the memorandum. Nor does the case appear to be one in which the appeal ought to have been summarily rejected without sending for the records. The conviction is based on the evidence of witnesses who are no longer members of the company and are alleged by the accused to have been dismissed by them. Their evidence ought to have been read by the Magistrate or he should have heard the pleader before dismissing the appeal.

I accordingly set aside the order of the Magistrate, under section 421 of the Criminal Procedure Code, direct the First-class Magistrate of Masulipatam Sub-division to restore the case to his file and dispose of it according to law.

APPELLATE CRIMINAL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice.

KADER BATCHA AND OTHERS (FIRST PARTY), PETITIONERS,

v.

KADER BATCHA ROWTHAN AND OTHERS (SECOND
PARTY), COUNTER-PETITIONERS *

1905.
October 17.

Criminal Procedure Code Act V of 1898, s. 147—Dispute as to right to use a mosque within the section—Charter Act, s. 15.

An order under section 147 of the Code of Criminal Procedure, declaring possession to be with a certain person is illegal when there has been no enquiry as to the party in possession and will be set aside under section 15 of the Charter Act.

A dispute as to the right to use a mosque between persons claiming to be entitled to officiate as Kazi therein is a dispute coming within section 147 of the Code of Criminal Procedure.

THE Second-class Magistrate of Tiruppattur, acting on certain petitions presented to him by persons interested in the mosque at Tiruppattur, and on a police report and being satisfied that a breach of the peace was likely to occur from the attempts made by one Peria Sevvai to introduce two other persons to officiate for him as

* Criminal Miscellaneous Petition No. 87 of 1905, presented under section 15 of the Charter Act, praying the High Court to set aside the order of C. G. Mackay, Esq., Sub-Divisional Magistrate of Ramnad, in Miscellaneous Case No. 43 of 1904.

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Kazi in the mosque, referred the matter to the Sub-Divisional Magistrate of Ramnad. The Sub-Divisional Magistrate issued notice under section 147 of the Code of Criminal Procedure, to the parties to appear and file written statements and produce evidence as to their respective claims to the right of appointing persons to officiate in the mosque. The parties accordingly filed statements and adduced evidence but there was no inquiry as to who was in possession of the mosque. The Sub-Divisional Magistrate passed orders, the operative portion of which was as follows:—

“ I find for the counter-petitioners’ party declaring the mosque to be in their possession and direct the petitioners to cease from a course which is likely to engender strife until they have established their claim as indicated above. ”

The petitioners preferred this criminal miscellaneous petition.

K. N. Ayya for petitioners.

Messrs. *Mohamed Ibrahim Sahib* and *Mohamed Ismail Sahib* for counter-petitioners Nos. 2 to 5.

ORDER —No doubt there was no enquiry in this case as to who was in possession of the mosque. The order therefore in so far as it declares possession to be with the second party cannot be maintained and the vakil who represents that party concedes this. As to the real point in question it is clear that a dispute as to a right to use a mosque by persons claiming to be entitled to officiate as Kazis therein is a dispute coming within section 147 of the Code of Criminal Procedure and *Muhammad Musaliar v. Kunji Chok Musaliar*(1), so far as it goes confirms the above view. The order will therefore be modified by directing that Ibrahim and Kather Ibrahim shall not be introduced into the mosque to officiate therein, by the five individuals mentioned in the Magistrate’s order as forming party No. I, until the decision of a competent Civil Court recognizing the alleged right is obtained by them.

(1) I L.R., 11 Mad., 323.